

## ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR08-730

HENRY MIKE WATKINS JR.,  
APPELLANT

V.

STATE OF ARKANSAS,  
APPELLEE

Opinion Delivered 25 FEBRUARY 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. CR07-2432]THE HONORABLE JOHN W.  
LANGSTON, JUDGE

AFFIRMED

**D.P. MARSHALL JR., Judge**

After a bench trial, the circuit court convicted Henry Watkins of possessing less than ten pounds of marijuana and possessing Clonazepam. The court sentenced him as a habitual offender to four years' imprisonment.

Watkins's sole argument for reversal, a sufficiency challenge, lacks merit. *Benitez v. State*, 99 Ark. App. 140, 142–43, 257 S.W.3d 902, 905 (2007); Ark. Code Ann. § 5-64-401 (Supp. 2007). In so holding, we view the evidence supporting the conviction in the light most favorable to the State. *Law v. State*, \_\_\_ Ark. \_\_\_, \_\_\_, \_\_\_ S.W.3d \_\_\_, \_\_\_ (4 February 2009). This case involves joint occupancy of a minivan. So the State had to link Watkins and the illegal drugs. *Benitez*, 99 Ark. App. at 143, 257 S.W.3d at 906. Our supreme court has described five factors for consideration in these cases: (1) whether the contraband was in plain view; (2)

whether the contraband was found with Watkins's personal effects; (3) whether the contraband was found on the same side of the minivan as Watkins or in near proximity to him; (4) whether Watkins was the owner of the minivan, or exercised dominion and control over it; and (5) whether Watkins acted suspiciously before or during arrest. *Ibid.* Further, in *Miller v. State*, 68 Ark. App. 332, 335, 6 S.W.3d 812, 814 (1999), this court analogized an officer smelling a strong odor of marijuana when he approached a stopped vehicle to the marijuana being in plain view. "It is the knowledge of the existence of the contraband that provides substantial evidence of constructive possession." *Ibid.*

Sergeant Theodore Haase of the Pulaski County Sheriff's Office testified that, while he was on patrol one evening, he stopped a minivan for a traffic violation. When he made contact with the driver, he smelled the "overwhelming odor" of burnt marijuana coming from the vehicle. He asked the driver and the front-seat passenger to exit the vehicle. Both denied possessing any marijuana.

Haase then made contact with Watkins, the only other passenger. He was sitting on the third-row bench seat. Haase instructed Watkins to "hand [him] the marijuana." Watkins then pulled a small baggie out of a black and tan leather bag sitting next to him on the seat. The baggie contained a green leafy substance, which Haase suspected was marijuana. A further search of the leather bag revealed eight small baggies and one large baggie of the green leafy substance and thirteen pills. Tests later confirmed that the substance in the baggies was marijuana. The eight smaller baggies

had a combined weight of twenty-eight grams and the one larger baggie weighed thirty-two and a half grams. Tests also revealed that five of the pills were Clonazepam.

Watkins testified that the leather bag was not his and that it was in the minivan when he got in the vehicle. He didn't move it because his mother told him "don't put no woman's purse on the floor," and he didn't know whose bag it was. Watkins testified that the only reason he knew what was in the bag was because he "was a little nosy" and had looked in it. The circuit court, however, was the fact-finder charged with weighing the evidence and determining Watkins's credibility. *Law*, \_\_\_ Ark. at \_\_\_, \_\_\_ S.W.3d at \_\_\_.

On appeal, Watkins argues correctly that some of the enumerated linking factors are not present in this case. But the factors that are present link Watkins to the marijuana and Clonazepam. First, Haase smelled a strong odor of burnt marijuana coming from the minivan. Second, Watkins was close to the illegal drugs: they were right beside him; he was the only person sitting on the third-row bench seat; and the other two passengers were in the front of the minivan. Lastly, when asked by Haase to hand over the marijuana, Watkins did. He reached into the leather bag and pulled out one of the small baggies. We therefore hold that substantial evidence supports Watkins's possession convictions. *Benitez*, 99 Ark. App. at 142-43, 257 S.W.3d at 905; Ark. Code Ann. § 5-64-401.

Affirmed.

ROBBINS and BROWN, JJ., agree.